

ORIGINAL

Before The  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C.

In the Matter of

Amendment of Section 73.202(b)  
Table of Allotments  
FM Broadcast Stations  
(Caldwell, Texas, et al)

To: The Commission

) MM Docket No. 91-58  
)  
) RM-7419  
)  
) RM-7797  
) RM-7798

**RECEIVED**

AUG 24 1999

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**COMMENTS ON BRYAN SUPPLEMENT**

On August 17, 1999, a "Supplement to Remand Filing" was filed in this proceeding by Bryan Broadcasting License Subsidiary, Inc. ("Bryan"). Roy E. Henderson ("Henderson"), by counsel, herewith files his Comments on the Bryan Supplement.

The Bryan Supplement, filed on August 17, 1999, reports that the FAA had issued a determination of "Presumed Hazard" on June 28, 1999, rejecting the antenna proposal that had been submitted by Bryan as a proposed modification of permit filed with the FCC on April 19, 1999. This proposed change in the Bryan permit was designed to bring Bryan into compliance with rule 73.315(a). Its existing permit, as requested and issued to Bryan, proposed a station that would suffer an admitted substantial deficiency in meeting the city grade coverage requirements of 73.315(a), failing to supply the required signal to 8.4% of its area and 4,185 persons within that area. This, as compared to Henderson's proposal which would serve a substantially greater area and substantially greater population and which would arguably fail to

meet the requirements of 73.315(a) only by a de minimis amount of 4% airport/industrial area including approximately 25 persons.

The Court of Appeals remanded this case to the Commission in March of 1999 in recognition of this very disparity, a point also recognized by the Commission itself in its own Motion For Remand. Bryan filed its proposed Amendment in an 11th hour attempt to change the facts of the case, to propose a new fully compliant site for purposes of the Commission's decision on remand, a maneuver described by Bryan itself in its Supplemental Comments filed April 29, 1999, as making the new analyses ordered by the Court "moot".

Henderson strenuously argued against recognition of Bryan's proposed amendment, claiming that any such recognition at this point, in this case, would be grossly unfair and inequitable, and a violation of Henderson's rights of administrative due process, as well as the remand of the Court. While Henderson continues to vigorously maintain that position, the recent filing by Bryan and its somewhat tardy admission that the tower site for its new amended location has been rejected by the FAA, appears to have conclusively removed and obviated such a proposed attempt by Bryan to change the facts and upgrade its position in this case. It is also relevant to note that although Bryan waited for almost two months after the FAA rejection to report that fact to the Commission, it has not during that time found any alternate site to use for its amendment and is still "reviewing its options".

In sum, for purposes of this case before the Commission, the facts are, and should be in any case, as they were at the time of the last consideration and Decision by the Commission as issued on July 22, 1998, and as they existed at the time of the Court's remand. The failure of Bryan's proposed Amendment simply underscores that fact. The facts remain, as they have been, that Henderson's proposal would result in a C2 station and a C3 station providing service to 283,100 persons in 11,130 square kilometers, while Bryan's proposal would yield only a C2 station and a low powered Class A station serving 262,500 persons in only 8,880 square kilometers of area. Henderson's proposal is clearly superior and would serve the public interest of providing more service to substantially more people in a far larger area.

It is clear from the Commission's prior Decisions in this proceeding that it too recognized the superior service of the Henderson proposal but that it felt compelled to find in favor of the inferior Bryan proposal due to its mistaken belief that Bryan fully met the requirements of 73.315(a) and that Henderson did not, albeit admittedly a de minimis failure. The facts as subsequently disclosed now establish beyond a doubt that while the Henderson proposal may suffer that de minimis failure (25 people in a 4% industrial/airport area) to fully comply with 73.315(a), that the Bryan proposal in fact suffers a substantial violation of 73.315(a), failing to serve 4,145 people in 8.4% of the area of its city of license.

These are the uncontroverted facts upon which the Commission must decide this case, now unmuddied by Bryan's unsuccessful attempt to change them in its favor by amendment, and upon these facts, Henderson's proposal is clearly superior in the public interest and should be adopted.

Respectfully Submitted,

ROY E. HENDERSON

by



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August 24, 1999

CERTIFICATE OF SERVICE

I, Robert J. Buenzle, do hereby certify that copies of the foregoing COMMENTS ON BRYAN SUPPLEMENT have been served by United States mail, postage prepaid this 24th day of August, 1999, upon the following:

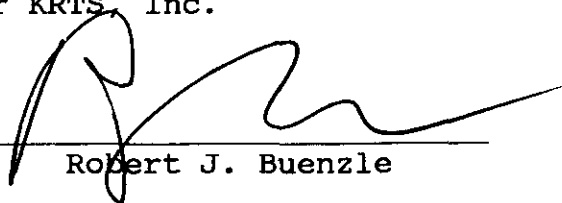
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